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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

ROBERT ROSS, Plaintiffs and Appellants, v. HARTFORD INSURANCE COMPANY et al., Defendants and Respondents.	A154660 (City & County of San Francisco Super. Ct. Nos. CGC-07-274099)
WILLIE HOWARD, Plaintiff and Appellant, v. HARTFORD INSURANCE COMPANY et al., Defendants and Respondents.	A154662 (City & County of San Francisco Super. Ct. No. CGC -09-275138)
MICHAEL STEINBERGER, Plaintiff and Appellant, v. HARTFORD INSURANCE COMPANY et al., Defendants and Respondents.	A154664 (City & County of San Francisco Super. Ct. No. CGC-08-274642)
MONROE AMEY, Plaintiff and Appellant, v. HARTFORD INSURANCE COMPANY et al., Defendants and Respondents.	A154665 (City & County of San Francisco Super. Ct. No CGC-10-275535)

ROBERT HANSON, Plaintiff and Appellant, v. HARTFORD INSURANCE COMPANY et al., Defendants and Respondents.	A154668 (City & County of San Francisco Super. Ct. No. CGC-10-275624)
JOANN VALLADON, Plaintiff and Appellant, v. HARTFORD INSURANCE COMPANY et al., Defendants and Respondents.	A154671 (City & County of San Francisco Super. Ct. No. CGC-03-421945)

Before us are six consolidated identical appeals in which plaintiffs asserting asbestos-related claims appeal from orders setting aside default judgments entered against Williams & Burrows, Inc., the insured of respondents Hartford Insurance Company (Hartford) and Nationwide Insurance Co. (Nationwide). Although the precise relevant dates in the six cases vary somewhat, in each case they follow the pattern of dates in the case filed on behalf of plaintiff Robert Ross: Williams & Burrows, Inc., a former corporation that had been dissolved in 2001, was served with the summons and complaint on March 10, 2009, a request for entry of default was filed on June 22, 2009, and a default judgment was entered on December 10, 2015. On April 17, 2017, counsel for Hartford filed motions in each of the cases on behalf of Williams & Burrows, Inc. to set aside the defaults and default judgments. On May 9, the motions were denied with prejudice on the ground that Williams & Burrows, Inc., having been properly served with the summons and complaint and having failed to so advise its insurers, was not entitled to such relief.[1] Thereafter, on November 2, 2017, the two insurers, "specially appearing," filed motions under the court's "inherent equity power to grant relief from a default and default judgment where there has been 'extrinsic' fraud or mistake." (*Weitz* v. *Yankosky*

[1] The court considered and denied the motion in the action brought by Monroe Amey, another one of the six cases, and the five remaining cases were then taken off calendar.

(1966) 63 Cal.2d 849, 855.) After a hearing, the trial court granted the motion to set aside the default judgments, explaining that the two insurers "demonstrated that the court should invoke its inherent, equitable power to set aside a default judgment on the ground of extrinsic fraud or mistake because they demonstrated a meritorious defense, a satisfactory excuse for not presenting a defense to the original action, and diligence in seeking to set aside the default judgment once it was discovered."[2]

All parties acknowledge that the orders setting aside the default judgments may be reversed only for an abuse of discretion. (*Weitz v. Yankosky*, *supra*, 63 Cal.2d at p. 854.) They also agree that the standard for vacating a default judgment on equitable grounds is the three-part test articulated in *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 982-984: the moving party must demonstrate that it has a meritorious defense, a satisfactory excuse for not having timely presented it, and diligence in moving to set aside the default once discovered. Plaintiffs do not dispute the sufficiency of the insurers' showing of the first two of these elements; they challenge only the trial court's determination that the insurers exercised due diligence in seeking relief once aware of the default judgments against their insured.

Among the evidence before the trial court was a declaration of Hartford's "Manager in Strategic Claim Management." The declaration reads in part as follows: "Hartford is not a party to this action and was never formally served with a copy of the summons and complaint, the request for entry of default, the application for entry of default judgment, the notice of entry of default judgment, or any other pleading or document filed in the present action. Williams & Burrows never notified Hartford of the service of summons and complaint in this action or the entry of default or default judgment, and it never tendered its defense in the present action to Hartford. [¶] Hartford first became aware of Williams & Burrows as a defendant in asbestos cases as a result of a blind tender received from the Brayton-Purcell law firm on September 7, 2016. The

[2] The court denied the motion to set aside the entry of the defaults, explaining that "[w]ith the default judgment set aside, it is unnecessary to set aside the entry of default because an insured's default has no effect on the insurer(s)."

tender letter indicated that a summons and complaint had been served on Williams & Burrows in the case of *Michael Rhodes v. Associated Insulation*, San Francisco Superior Court No. CGC-12-276037.[3] The blind tender letter also requested that Hartford search its records immediately and provide copies of all policies of insurance issued at any time to or covering Williams & Burrows.[4] . . . . The Rhodes tender letter was Hartford's first notice that Williams & Burrows had been served with a summons and complaint in any asbestos action filed in the San Francisco Superior Court. . . . [¶] Upon receipt of Brayton's blind tender, Hartford took steps to determine whether it had ever issued an insurance policy to Williams & Burrows which apply to the Michael Rhodes claim. On September 9, 2016, in an initial electronic policy search, a reference to the above-mentioned policy was located. On September 26, 2016, we received the physical files from storage and were able to confirm the reference to the above-mentioned policy. As stated above, the actual policy has not been located, and therefore the alleged policies specific terms have yet to be determined. After exhausting the possible avenues of locating the alleged policy and internal discussions, Hartford decided to participate in the defense of Williams & Burrows in the Michael Rhodes case, subject to a reservation of rights. [¶] Hartford retained the services of [Walsworth WFBM, LLP (WFBM)] on December 01, 2016 to defend Williams & Burrows in the Rhodes case, subject to a full reservation of rights . . . . On December 1, 2016, Hartford requested WFBM to provide a list of all cases pending against Williams & Burrows in the San Francisco Superior Court. [¶] On December 6, 2016, WFBM provided a list of 54 filings which named Williams & Burrows in San Francisco Superior Court. . . . [¶] On January 25, 2017, WFBM provided to Hartford an additional report, identifying 20 of the 54 filings as 'non-active' cases. The list included [the six cases on appeal]. The list did not specify that defaults and default

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[3] *Rhodes v. Associated Insulation* is not one of the six cases involved in the present appeal.

[4] The declaration explained, "A blind tender is a letter sent by a plaintiffs counsel to one or more insurance carriers notifying the carrier(s) of the existence of the lawsuit against a non-appearing defendant in the hopes that the carrier issued coverage to that defendant."

judgments had been entered in those six cases. [¶] On April 4, 2017, in connection with its investigation, WFBM informed Hartford for the first time that defaults and default judgments had been entered in the [six cases]. This was Hartford's first notice of the default and default judgment in each of those six cases. [¶] Hartford retained WFBM to represent Williams & Burrows in each of the six lawsuits, subject to a full reservation of rights . . . . [¶] On behalf of Williams & Burrows, defense counsel filed motions to set aside the default judgment in each of the six cases on April 17, 2017. [¶] . . . [¶] The denial of the Williams & Burrows' motions [on May 9] raised multiple issues including the legal effects of the denial, the need for consultation and negotiations between alleged insurance carriers for Williams & Burrows, and the need for separate representation of both Hartford and Nationwide Insurance Company (which is also alleged to have issued policies that allegedly provide coverage to Williams & Burrows) in connection with the present motion. These issues required consultation and decision-making over the ensuing months before the present motions could be completed and filed." A similar and consistent showing was made on behalf of Nationwide.

Plaintiffs contend that this showing does not demonstrate sufficient diligence to justify relief, pointing for example to the amount of time that elapsed between the insurers' awareness of their potential liability as insurers of Williams & Burrows, Inc. in September 2016 and the retention of counsel on December 1, 2016. Plaintiffs' principal challenge to the adequacy of the insurers' diligence, emphasized at oral argument, is with respect to the time period between the trial court's denial of the motion filed on behalf of Williams & Burrows on May 9, 2017, and the filing of the motion for relief on their own behalves on November 2, 2017.

With respect to the period between May and November 2017, declarations from employees of both insurers repeated that the denial of the motion on behalf of the insured raised numerous issues, including the need for new representation, that "required extensive consultation and decision-making over the ensuing months before the present motions could be completed and filed." While greater specificity might well have been provided by the insurers or required by the trial court, the court was entitled to accept

these plausible representations from the responsible agents of both insurance companies. Moreover, in weighing the competing considerations as to the appropriateness of equitable relief, the court was entitled to consider the apparent absence of prejudice to plaintiffs and that granting the motion would mean that all parties would be entitled to further proceedings in which the merits of the underlying claims can be determined. (See, e.g., *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233; *In re Marriage of Jacobs* (1982) 128 Cal.App.3d 273, 280; *Nilsson v. City of Los Angeles* (1967) 249 Cal.App.2d 976, 980.) Given the steps that were taken, we cannot say that the trial court abused its discretion in finding due diligence or that its decision "exceeds the bounds of reason and results in a miscarriage of justice." (*Fassberg Construction Co. v. Housing Authority of City of Los Angeles* (2007) 152 Cal.App.4th 720, 763; *In re Marriage of Jacobs*, *supra*, at p. 280.)

The orders on appeal are affirmed.

POLLAK, P. J.

WE CONCUR:

STREETER, J.
BROWN, J.